IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3504 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

and

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AHMEDABAD MUNICIPAL CORPN

Versus

BHAGYODAY RESTAURANT

Appearance:

MR KIRIT I PATEL for Appellant

MR VC DESAI for Respondent

CORAM : MR.JUSTICE M.R.CALLA

and

MR.JUSTICE J.R.VORA

Date of decision: 20/02/2001

ORAL JUDGEMENT (Per : MR.JUSTICE M.R.CALLA)

1. This Appeal was admitted by a common order separately passed along with other cognate matters. This First Appeal u/s 411 of the Bombay Provincial Municipal Corporation Act, 1949, is directed against the order dated 24th April, 2000 passed by the Judge, Court No.13, Small Causes Court at Ahmedabad, in Municipal Valuation Appeal No.5190 of 1998 for the assessment year 1996-97 in respect of the premises situated in Ward Ellisbridge C/1, bearing Survey No. TPS-26/SN-4th/ Paiki/11. The Municipal Corporation had fixed the Gross Rateable Value of the aforesaid premises at Rs. 80,371/-. The assessee preferred the Municipal Valuation Appeal and prayed that the Gross Rateable Value of the premises in question may be fixed at Rs. 11,550/- for the Assessment Year 1996 97.

2. The Valuation report was produced at Exh.16. The Assessee had examined the valuer Shri B.R. Rami at Exh.15 and the Valuer had also been cross-examined. The property was valued at Rs. 4,20,525/- and the Assessee had produced an agreement-cum-declaration at Exh.13 to show that the Assessee had purchased the superstructure at Rs. 1,65,000.00 and the construction has been carried out in the year 1997 ad measuring about 155 sq. meters and incurred total expenses at Rs. 2,56,525/- for additional construction. The valuer had stated that he had calculated the cost of construction at Rs. 1,655/- per sq. meters. The Corporation did not produce any evidence to justify the assessment made by the Appellate Officer of the Corporation. The Small Causes Court, therefore fixed the GRV of the premises in question at higher rate of 9% on the total cost of construction as per valuer's report at Rs. 37,847/- and assessed the GRV of the premises in question accordingly.

3. Learned counsel for the appellant has not been able to assail this order on any ground whatsoever and it is submitted that whereas in some other cases the matters have been remanded after setting aside the orders passed in the Municipal Valuation Appeals on the ground that the valuer had not been examined and while passing such orders of remand it is also left open for the Municipal Corporation to move an application before the Small Causes Court u/s 409 of the Bombay Provincial Municipal Corporation Act for the appointment of any expert valuer, such opportunity may also be given in the present case.

4. Whereas no case for remanding the matter is made out in this case nor any parity can be shown with the

matters which have been remanded back on the ground that the valuer had not been examined and there is no dispute about the factual position in the facts of the present case that the valuation report had been produced and the valuer had been examined in this case at Exh.15, namely, Shri B.R.Rami, and the Corporation had also availed the opportunity of cross-examining the said valuer, neither this matter is required to be remanded nor any order can be passed with regard to the remand of the matter and allow the present appellant - Municipal Corporation to move an application u/s 409. The opportunity to move an application u/s 409 for appointment of an expert valuer was available to the Municipal Corporation during the pendency of the Municipal Valuation Appeal, which has been decided by the impugned order but the Municipal Corporation failed to avail such an opportunity while the Appeal was pending before the Small Causes Court. The remand order cannot be passed only for giving an opportunity for moving an application u/s 409 when the Municipal Corporation itself did not avail such an opportunity during the pendency of the Municipal Valuation Appeal.

5. Learned Advocate Mr. K.I. Patel has cited the decision of this court in the case of Municipal Corporation of Ahmedabad vs. Oriental Fire and General Insurance Co.Ltd. reported in 85 (2) GLR 1498. In our opinion, the ratio of this decision and the question which has been decided therein does not even touch the fringes of the argument raised by the learned advocate on which he seeks an order for allowing him to make an application before the Small Causes Court u/s 409 of the Bombay Provincial Municipal Corporation Act as that opportunity was never availed. The learned Counsel for the Corporation has failed to point out any circumstances as to why the application u/s 409 was not moved before the Small Causes Court during the pendency of the Appeal before it.

6. We do not find any reason to interfere with the impugned order as has been passed by the Small Causes Court. This Appeal has no substance, the same is hereby dismissed with no order as to costs.

(M.R. Calla, J.)

(J.R. Vora, J.)

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